

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Mulinelli (S)	Team: Squad #7	CCRB Case #: 201705685	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/08/2017 4:00 AM	Location of Incident: § 87(2)(b)	Precinct: 40	18 Mo. SOL 1/8/2019	EO SOL 1/8/2019	
Date/Time CV Reported Sat, 07/08/2017 5:00 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 07/13/2017 3:00 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Carlos Gomez	14919	955954	PSA 7
2. POM Cary Oliva	363	955272	040 PCT
3. POM Florenc Dacaj	05678	960416	040 PCT
4. SGT Jose Caban	01324	929805	PSA 7
5. An officer			Unknown
6. POM Lawrence Chan	06046	956513	040 PCT
7. POF Stephanie Sanchez	07748	961564	040 PCT
8. POM Jose Cordero	14899	956547	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Cesar Gomez	00477	941024	040 PCT
2. SGT Brian Kovall	4460	942023	040 PCT
3. POM Saul Quilesmorales	05235	952136	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Jose Caban	Force: Sergeant Jose Caban pointed his gun at § 87(2)(b)	
B.POM Carlos Gomez	Force: Police Officer Carlos Gomez pointed his gun at § 87(2)(b)	
C.SGT Jose Caban	Abuse: Sergeant Jose Caban stopped § 87(2)(b)	
D.POM Carlos Gomez	Abuse: Police Officer Carlos Gomez stopped § 87(2)(b)	
E.POM Jose Cordero	Abuse: Police Officer Jose Cordero stopped § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
F.SGT Jose Caban	Force: Sergeant Jose Caban used physical force against § 87(2)(b)	
G.SGT Jose Caban	Force: Sergeant Jose Caban used physical force against § 87(2)(b)	
H.SGT Jose Caban	Abuse: Sergeant Jose Caban frisked § 87(2)(b)	
I.SGT Jose Caban	Abuse: Sergeant Jose Caban searched § 87(2)(b)	
J.POM Carlos Gomez	Abuse: Police Officer Carlos Gomez frisked § 87(2)(b)	
K.POM Jose Cordero	Abuse: Police Officer Jose Cordero frisked § 87(2)(b)	
L.POM Jose Cordero	Force: Police Officer Jose Cordero used physical force against § 87(2)(b)	
M. An officer	Abuse: An officer stopped § 87(2)(b)	
N. An officer	Abuse: An officer frisked § 87(2)(b)	
O. An officer	Abuse: An officer searched § 87(2)(b)	
P.POM Lawrence Chan	Force: Police Officer Lawrence Chan used physical force against § 87(2)(b)	
Q.POF Stephanie Sanchez	Force: Police Officer Stephanie Sanchez used physical force against § 87(2)(b)	
R.POM Florenc Dacaj	Force: Police Officer Florenc Dacaj used physical force against § 87(2)(b)	
S.POM Cary Oliva	Force: Police Officer Cary Oliva used physical force against § 87(2)(b)	
T.SGT Jose Caban	Force: Sergeant Jose Caban used physical force against § 87(2)(b)	
U. An officer	Force: An officer used physical force against § 87(2)(b)	
V. An officer	Discourtesy: An officer acted discourteously toward § 87(2)(b)	
W.POM Jose Cordero	Force: Police Officer Jose Cordero used physical force against § 87(2)(b)	
X.POM Jose Cordero	Force: Police Officer Jose Cordero used physical force against § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On July 8, 2017, § 87(2)(b) filed this complaint via phone with the Internal Affairs Bureau (IAB) on behalf of his sister, § 87(2)(b) witnessed a portion of the incident from the window of his § 87(2)(b) apartment.

On July 8, 2017, at approximately 4:00 a.m., § 87(2)(b) was walking near § 87(2)(b) in the Bronx with his friends, § 87(2)(b) and § 87(2)(b). Gunshots were fired at the group by unknown individuals, and § 87(2)(b) and his friends fled on foot. They were then stopped by Sgt. Jose Caban, PO Carlos Gomez, and PO Jose Cordero of PSA 7, with Sgt. Caban and PO Gomez pointing their firearms at them (**Allegations A and B: Force, § 87(2)(g)** **Allegations C through E: Abuse of Authority, § 87(2)(g)** Sgt. Caban used a forcible takedown against § 87(2)(b) and punched him while on the ground (**Allegations F: Force, § 87(2)(g)** **Allegation G: Force, § 87(2)(g)** Sgt. Caban frisked and allegedly searched § 87(2)(b) (**Allegation H: Abuse of Authority, § 87(2)(g)** **Allegation I: Abuse of Authority, § 87(2)(g)** PO Gomez and PO Cordero respectively frisked § 87(2)(b) and § 87(2)(b) (**Allegations J and K: Abuse of Authority, § 87(2)(g)** After being frisked, § 87(2)(b) reportedly disobeyed PO Cordero's directive to leave the scene. PO Cordero then used a forcible takedown against § 87(2)(b) (**Allegation L: Force, § 87(2)(g)** Officers allegedly stopped, frisked, and searched § 87(2)(b) during the course of their investigation (**Allegations M, N, and O: Abuse of Authority, § 87(2)(g)**

PO Lawrence Chan, PO Stephanie Sanchez, PO Florenc Dacaj, and PO Cary Oliva of the 40th Precinct arrived as backup. PO Chan, PO Sanchez, PO Dacaj, PO Oliva, and Sgt. Caban used a forcible takedown against § 87(2)(b) and an officer allegedly punched her during the struggle (**Allegations P through S: Force, § 87(2)(g)** **Allegation T: Force, § 87(2)(g)** **Allegation U: Force, § 87(2)(g)**). As the struggle unfolded, an officer allegedly smacked § 87(2)(b) phone from her hand (**Allegation V: Discourtesy, § 87(2)(g)** PO Cordero allegedly pulled § 87(2)(b) hair and punched her as he placed her into an RMP (**Allegation W: Force, § 87(2)(g)** PO Cordero also allegedly punched § 87(2)(b) while placing him into an RMP (**Allegation X: Force, § 87(2)(g)**

§ 87(2)(b) fled the scene and was not summonsed or arrested.

Video footage of this incident was obtained from § 87(2)(b)'s cell phone and a deli on § 87(2)(b) [01-02 Board Review].

Findings and Recommendations

Allegation A – Force: Sergeant Jose Caban pointed his gun at § 87(2)(b)

Allegation B – Force: Police Officer Carlos Gomez pointed his gun at § 87(2)(b)

Allegation C – Abuse of Authority: Sergeant Jose Caban stopped § 87(2)(b)

Allegation D – Abuse of Authority: Police Officer Carlos Gomez stopped § 87(2)(b)

Allegation E – Abuse of Authority: Police Officer Jose Cordero stopped § 87(2)(b)

§ 87(2)(b) testified that he, § 87(2)(b) and § 87(2)(b) did not possess any weapons or have any items on their person which created a bulge. § 87(2)(b) denied hearing any gunshots in the area. § 87(2)(b) and his friends were approached by officers and an officer, identified by the investigation as Sgt. Caban, immediately pointed his gun toward § 87(2)(b)'s chest and ordered him to get on the ground [03 Board Review].

In a phone statement, § 87(2)(b) stated that he, § 87(2)(b) and § 87(2)(b) were walking near the Jackson Avenue train station when other individuals from the neighborhood fired shots at them. Less than five minutes later, § 87(2)(b) and his friends were stopped by officers who pointed their guns at the group and told them to get down [04 Board Review].

§ 87(2)(b) stated the officers approached, drew their guns, and ordered everyone to the ground [05 Board Review].

§ 87(2)(b) who was passing by the encounter, did not know the reason for the stop and made no mention of any officer pointing a gun at the men [06 Board Review]. § 87(2)(b) who witnessed the incident from his sixth-floor window, made no mention of witnessing officers stop individuals other than § 87(2)(b) and he did not report seeing officers with their guns pointed [07 Board Review]. § 87(2)(b) was unavailable to the investigation [see IAs].



2018-02-08_12-24-28.mp4

Video footage from a deli captured three officers arriving in an unmarked, dark sedan as § 87(2)(b) and § 87(2)(b) walked toward the intersection. Sgt. Caban and PO Gomez exited from the passenger's side at the 0:13 mark. § 87(2)(b) who is wearing a white shirt, and § 87(2)(b) who is dressed in all black, are near the front of the officers' vehicle, while § 87(2)(b) is to the right and on the sidewalk partially obstructed by a tree. § 87(2)(b) crossed Westchester Avenue and did not interact with any officers. PO Gomez is seen reaching for his waist and then raising his arms as he points something toward § 87(2)(b) who is wearing a white shirt, at the 0:14 mark. Sgt. Caban is seen reaching for his waist with his right hand, though his actions immediately afterward are unclear as he crosses paths with PO Gomez and is then obscured by the RMP's headlights at the 0:18 mark. Both § 87(2)(b) and § 87(2)(b) drop to their knees as the officers approach them. PO Cordero approaches § 87(2)(b) who is still on the northern corner of the sidewalk. He does not appear to remove his firearm from its holster [08 Board Review].

The officers consistently testified to hearing multiple shots fired as they were driving southbound on Westchester Avenue toward East 156th Street. Seconds later, the officers observed a group of three or more black males running down Westchester Avenue in the same direction as the officers were traveling. None of the officers knew whether the members of the group were possible victims or perpetrators, but they intended to conduct an investigation in regard. The officers pursued the men in their vehicle and executed a stop less than one minute later at the three-way intersection [§ 87(2)(b)] [08-11 Board Review].

Aside from running from a scene at which shots were fired, PO Gomez did not remember whether he observed any suspicious or furtive movements from those individuals as he approached. PO Gomez did not remember whether or not he observed a bulge on anyone's person. He was unable to discern whether anyone was holding any items. PO Gomez heard a radio transmission of an activated Shot-Spotter in the immediate vicinity of where they heard the gunshots but maintained that the officers acted on their own observations when stopping the men.

According to PO Gomez, the area in which they heard the gunshots is a high-crime area known for the [§ 87(2)(b)] gang, shootings, robberies, and the use and sale of narcotics. These factors, as well as the time of the incident, 4:00 a.m., factored into PO Gomez's decision to stop the group.

Because he heard shots fired and immediately saw the males run, and based on his Police Academy training and experience in similar incidents, he drew his firearm and pointed it at [§ 87(2)(b)]. From the onset, PO Gomez did not have any particular suspicion as to where [§ 87(2)(b)] may have possessed a weapon, nor did he make any observations pointing to the concealment of a weapon. PO Gomez then holstered his weapon after [§ 87(2)(b)] went to the ground.

PO Gomez saw that Sgt. Caban had his firearm pointed at [§ 87(2)(b)]. He did not remember any issues encountered by Sgt. Caban in regard [09 Board Review].

PO Gomez clarified that his memo book entry, which stated that the men were stopped for [§ 87(2)(b)], referenced the violations for which they were summonsed rather than the initial motivation for the stop. The [§ 87(2)(b)] were issued in response to the civilians' behavior as they were placed into RMPs [24, 36-37 Board Review].

Sgt. Caban testified that he intended to stop the group and investigate by frisking them for weapons. Because the men were running, Sgt. Caban did not have time to assess whether they had any bulges or other telltale signs of the possession of a weapon. [§ 87(2)(b)] had his back to Sgt. Caban as Sgt. Caban exited his vehicle and ordered him to stop. As such, Sgt. Caban was still unable to see [§ 87(2)(b)]'s entire waistband. With this partial view, Sgt. Caban was unable to tell whether [§ 87(2)(b)] possessed a weapon. Sgt. Caban's decision to stop the men was influenced by the aforementioned observations and not by a radio run involving an activated Shot-Spotter, which he did not learn of until after the incident concluded. No other factors influenced his decision to stop the group. Sgt. Caban had his firearm drawn and pointed toward the ground, albeit at a slightly raised angle, as he approached [§ 87(2)(b)]. He denied pointing his firearm at [§ 87(2)(b)] or any other civilian.

After reviewing the above-described video footage, which captured Sgt. Caban approaching § 87(2)(b) face to face and § 87(2)(b) quickly dropping to his knees, Sgt. Caban stated that he remembered the details of the approach differently. However, he acknowledged that based on his memory of the actions he took thereafter, he was the officer interacting with § 87(2)(b) [10 Board Review].

PO Cordero testified that he did not remember whether he observed any signs indicating that a weapon was present as he approached in his vehicle or after exiting it. Aside from the fact that the members of the group were running together from the location of a shooting, no additional factors led him to believe that these individuals were involved in the shooting. A Shot-Spotter activation was radioed less than a minute after PO Cordero and his partners heard the shots themselves, but this radio transmission played no factor in their decision to approach the group. PO Cordero and his partners approached the group less than one minute after hearing the shots fired.

As he exited the RMP, PO Cordero intended to determine whether any of the men possessed a gun or was shot. He identified himself as an officer and asked if anyone was hurt. At this same time, he recognized that the members of the group all seemed to know each other, and this raised his suspicion that they may have congregated for the purpose of a shooting. Further, no one responded to the inquiry, but the group became disorderly by yelling such statements as “fuck the police.” This behavior also raised PO Cordero’s suspicion. Regardless, PO Cordero stated that he did not remember whether he drew his firearm and denied pointing it at any individual during the incident. He did not know whether his partners drew or pointed their firearms [11 Board Review].

The Event documents generated for this incident revealed that a Shot-Spotter was activated at 3:58 a.m. in the area § 87(2)(b). PSA 7 Conditions radioed their location as § 87(2)(b) approximately two minutes later [38 Board Review].

§ 87(2)(b) was issued two summonses for disorderly conduct by PO Cordero. PO Cordero reported on these summonses that § 87(2)(b) refused to disperse and made unreasonable noise. Similarly, PO Cordero issued § 87(2)(b) two summonses for disorderly conduct as he reportedly displayed violent behavior toward police and refused to disperse [36 Board Review].

When officers hear gunshots and observe individuals leave the area from which gunshots emanated in close temporal proximity, they have founded suspicion that criminality is afoot. People v. § 87(2)(b), 106 A.D.3d 144 (2013) [12 Board Review], People v. Butler, 127 A.D.3d 623 (2015) [13 Board Review]. An officer must have particularized reasonable suspicion that criminality is afoot in order to stop an individual. People v. De Bour, 40 N.Y.2d 210 (1976) [39 Board Review]. When an officer approaches an individual with his gun drawn, that individual has been stopped. People v. Moore, 6 N.Y.3d 496 (2006) [14 Board Review]. An officer’s decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. Patrol Guide, procedure 221-01 [15 Board Review].

Sgt. Caban acknowledged drawing his firearm but denied pointing it at anyone, and his exact actions were unclear in the video. However, PO Gomez admitted to pointing his firearm directly at § 87(2)(b) and stated that he observed Sgt. Caban point his firearm at § 87(2)(b).

Despite Sgt. Caban's denial, based on civilian and officer statements, the investigation determined that Sgt. Caban pointed his firearm at § 87(2)(b) during this incident.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g), § 87(2)(b)
[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Allegation F – Force: Sergeant Jose Caban used physical force against § 87(2)(b)

Allegation G – Force: Sergeant Jose Caban used physical force against § 87(2)(b)

§ 87(2)(b) testified that he immediately complied with Sgt. Caban's order to get on the ground by dropping to his knees and putting his hands in the air. Sgt. Caban immediately grabbed § 87(2)(b) by his arms, and threw him face first to the ground. Sgt. Caban did not say anything to § 87(2)(b) before taking the above-described action.

According to § 87(2)(b) Sgt. Caban handcuffed him immediately after the takedown. § 87(2)(b) denied pulling his arms, moving his body, or resisting in any fashion, and he stated that Sgt. Caban never directed him to stop resisting. Sgt. Caban punched § 87(2)(b) twice on the back of his head. § 87(2)(b) was unable to defend himself because he was handcuffed. He then asked § 87(2)(b) whom he saw standing about 15 feet away and recognized from the neighborhood, to record video of the incident. Sgt. Caban punched § 87(2)(b) on the back of his head one more time before turning him over. § 87(2)(b) was not injured as a result of these punches [03 Board Review].

§ 87(2)(b) stated that she observed the officers throw each civilian to the ground as if they had been angry or fighting. She confirmed that an individual from the group requested that she record the incident, though she did not know his name. She made no mention of § 87(2)(b) resisting or of Sgt. Caban punching him [06 Board Review].

In a phone statement, § 87(2)(b) alleged that officers hit, elbowed, and kned § 87(2)(b) while he was on the ground [04 Board Review].



2018-02-14_12-14-56.mp4

Security camera footage captured § 87(2)(b) dressed in all black, facing Sgt. Caban as he dropped to his knees. Sgt. Caban appears to place one hand on § 87(2)(b)'s back and push him to the ground at the 0:15 mark. § 87(2)(b) quickly falls forward and lands on his stomach and left side. Sgt. Caban swings his fist toward § 87(2)(b) at the 0:24 mark, but it is unclear where this strike lands. § 87(2)(b) extends both arms and appears to begin pushing himself up at the 0:40 mark. § 87(2)(b) appears to reach for something with his right hand. At 1:01, Sgt. Caban swings his fist toward § 87(2)(b) a second time, and it is again unclear where this lands [33 Board Review, for clarity see original video in 02 Board Review].

Sgt. Caban testified that he approached § 87(2)(b) from behind. He was unable to see his waistband or whether he had a bulge near his waistband. § 87(2)(b) flinched a little to the

right and bladed his body. Sgt. Caban did not know if § 87(2)(b) was going to reach into the out-of-view portion of his waistband to retrieve a weapon. He cited a previous experience in which an individual fled, stopped, bladed his body, and drew a gun from his waistband as he turned to face Sgt. Caban, as influencing his thought process. Unlike that prior incident, § 87(2)(b) did not reach for anything.

The shots fired, the group running, and § 87(2)(b)'s movements led Sgt. Caban to fear for the safety of the officers and civilians. Sgt. Caban placed his hands on § 87(2)(b)'s arm and back and then pushed downward. § 87(2)(b) fell to the ground quickly and did not resist.

According to Sgt. Caban, § 87(2)(b) lay on his chest and placed both hands under his torso. Sgt. Caban instructed him to give up his hands, but § 87(2)(b) did not comply. Sgt. Caban's attempts to pull § 87(2)(b)'s arms free were unsuccessful. He punched § 87(2)(b) two to three times with a closed fist on his right bicep. § 87(2)(b)'s arms were underneath his torso and close to his waistband, though he could not tell whether § 87(2)(b) reached for it. Sgt. Caban ultimately required the assistance of another officer, whose identity he did not recall, to free § 87(2)(b)'s arms. He denied striking § 87(2)(b) anywhere aside from the bicep or seeing another officer strike him.

After reviewing the above-described video, which captured § 87(2)(b) walking toward Sgt. Caban and dropping to his knees, Sgt. Caban stated that he remembered the details of the approach differently. Sgt. Caban maintained that § 87(2)(b) bladed his body as he began kneeling. Sgt. Caban stated that the two punches captured in the video were consistent with his memory aside from the fact that they were approximately forty seconds apart [10 Board Review].

PO Gomez testified that he did not see Sgt. Caban push, punch, or use a forcible takedown against anyone because he was not facing Sgt. Caban. PO Gomez did not remember Sgt. Caban encountering any issues in gaining § 87(2)(b)'s compliance. Similarly, PO Cordero stated that he did not see Sgt. Caban use a forcible takedown or strike an individual because he had his back to his partners [09, 11 Board Review].

An officer will use only the reasonable force necessary to gain control or custody of a subject. Patrol Guide, procedure 221-01 [15 Board Review].

The video footage confirmed that § 87(2)(b) dropped to his knees while facing Sgt. Caban, negating Sgt. Caban's statement that he could not see § 87(2)(b)'s waistband as he approached from behind. The quality of the video is poor, and it does not show a flinch. Rather, the video captures no significant movements from § 87(2)(b) prior to when Sgt. Caban pushed him face first to the ground. Moreover, PO Gomez's assertion that Sgt. Caban encountered no resistance at this time supports the video evidence. § 87(2)(g)

§ 87(2)(g)
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§ 87(2)(g)

Allegation H – Abuse of Authority: Sergeant Jose Caban frisked § 87(2)(b)

Allegation I – Abuse of Authority: Sergeant Jose Caban searched § 87(2)(b)

Allegation J – Abuse of Authority: Police Officer Carlos Gomez frisked § 87(2)(b)

Allegation K – Abuse of Authority: Police Officer Jose Cordero frisked § 87(2)(b)

§ 87(2)(b) testified that Sgt. Caban frisked him on the exterior of his clothing before searching all of his pockets. Sgt. Caban removed only § 87(2)(b)'s wallet. § 87(2)(b) did not recall his attire from the date of the incident. He had his wallet, keys, and ID in his right rear pants pocket. He had his phone in his hand as he was using it to play music. He had no additional items in his pockets, and there was nothing in his pockets or waistband which could have created a bulge [03 Board Review].

§ 87(2)(b) testified that she observed an officer matching PO Cordero's description search § 87(2)(b) prior to telling him to leave. She did not remember the details of the search. She made no mention of § 87(2)(b) or any other party being frisked or searched [06 Board Review].

§ 87(2)(b) made no mention of being frisked or observing any other frisks or searches [04 Board Review]. § 87(2)(b) was unavailable to the investigation [see IAs].



201705685_20170901_1219_DM.mov

Cell phone video footage recorded by § 87(2)(b) captured Sgt. Caban, pictured closest to the camera, frisking § 87(2)(b)'s legs at the 0:01 mark. Although Sgt. Caban's hand paused near § 87(2)(b)'s buttocks, it is unclear whether his hand entered a pocket as the camera pans to the right at the 0:05 mark. PO Gomez is seen behind Sgt. Caban frisking § 87(2)(b) who is wearing a white shirt, on his torso and waist. PO Cordero is seen frisking § 87(2)(b) in the area of his waist at the 0:08 mark. Following the frisk, PO Cordero instructed § 87(2)(b) to leave. Moments later, he placed § 87(2)(b) back onto the ground [01 Board Review].

Sgt. Caban stated that he lifted § 87(2)(b) from the ground, after which he frisked § 87(2)(b)'s waistband, arms, chest, and legs. He chose these areas because weapons are commonly concealed there. He made no observations leading him to believe that § 87(2)(b)

§ 87(2)(b) had a weapon concealed in a specific area. Aside from the previously-described shots fired, and the fact that § 87(2)(b) bladed his body and flinched, no other factors influenced Sgt. Caban's decision to frisk him [10 Board Review].

PO Gomez acknowledged frisking § 87(2)(b) in the area of his waistline and pockets. He did not feel anything that alarmed him, and he did not remember frisking anywhere else. He stated that he had no particular suspicion as to where § 87(2)(b) may have possessed a weapon and did not remember if he saw any bulges. He stated that his uncertainty of whether § 87(2)(b) was armed was his motivation for frisking § 87(2)(b). The frisk was interrupted when PO Gomez moved to assist PO Cordero, who was struggling with § 87(2)(b) nearby. § 87(2)(b) then fled the scene [09 Board Review].

PO Cordero stated that he told § 87(2)(b) to leave the scene prior to determining his role in the shooting because the officers were outnumbered by the group, which he estimated to have been comprised of five to six individuals. He did not remember if he made physical contact with § 87(2)(b) prior to this. When § 87(2)(b) walked toward PO Gomez and § 87(2)(b) instead of leaving the scene, PO Cordero considered him to be guilty of disorderly conduct. He took § 87(2)(b) to the ground and frisked him as procedurally appropriate during an arrest.

During a review of § 87(2)(b) cell phone video, PO Cordero acknowledged frisking § 87(2)(b) at the 0:07 mark, prior to allowing him to leave. PO Cordero confirmed that he was frisking for weapons but denied remembering the chronology of the events because they transpired quickly. He had no particular suspicion regarding the location of a weapon. PO Cordero did not remember whether he observed any bulges on § 87(2)(b)'s person [11 Board Review].

An officer may take appropriate self-protective measures, such as a frisk, when he lawfully confronts an individual and reasonably believes him to be armed or otherwise dangerous. People v. Finlayson, 76 A.D.2d 670 (1980) [17 Board Review]. A search cannot be justified by probable cause that might have led to an arrest, but did not. People v. Reid, 24 N.Y.3d 615 (2014) [40 Board Review].

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

Allegation L – Force: Police Officer Jose Cordero used physical force against § 87(2)(b)

§ 87(2)(b) testified that an officer matching PO Cordero’s description told § 87(2)(b) to leave the scene. § 87(2)(b) tried to give § 87(2)(b) a hug before leaving but ended up changing course and walking south. The officer followed § 87(2)(b) grabbed his arm, and threw him to the ground. § 87(2)(b) did not know what the officer said to § 87(2)(b) prior to taking this action, though she speculated that he may have told him to walk in a different direction [06 Board Review].

§ 87(2)(b) testified that he observed officers speaking with § 87(2)(b) in the presence of § 87(2)(b) but he denied observing the details of this interaction. He made no mention of an officer using force against § 87(2)(b) made no mention of force being used against § 87(2)(b) and § 87(2)(b) was unavailable to the investigation [03 Board Review, see IAs].



201705685_20170901_1219_DM.mov

Video footage recorded on § 87(2)(b) cell phone revealed that PO Cordero told § 87(2)(b) “Take a walk.” As he did so, PO Cordero gestured north and in the opposite direction of his partners, who were still with the other civilians. PO Cordero extended his other arm to prevent § 87(2)(b) from walking toward his partners. § 87(2)(b) then turned around and walked in the direction of PO Gomez, who was standing over § 87(2)(b) came within five to six feet of PO Gomez. Seconds after § 87(2)(b) passed PO Gomez, PO Cordero grabbed § 87(2)(b)’s left arm and pulled him to the ground. During the takedown process, § 87(2)(b) said, “I was walking away.” § 87(2)(b) is handcuffed within seconds [01 Board Review].

PO Cordero testified that he instructed § 87(2)(b) to leave the scene for safety purposes because the officers were outnumbered. When § 87(2)(b) approached PO Gomez from behind, he cursed, clenched his fists, and bladed his body in a fighting stance as if he had planned to attack PO Gomez. These actions made PO Cordero fearful for PO Gomez’s safety as he felt they were inconsistent with someone leaving a scene. At this point, PO Cordero determined that § 87(2)(b) was guilty of disorderly conduct, specifically for failing to disperse. He grabbed § 87(2)(b) by his arm and guided him to the ground. PO Cordero did not remember forcefully throwing § 87(2)(b) to the ground [11 Board Review].

As noted above, PO Cordero issued § 87(2)(b) a § 87(2)(b) summons for refusing to disperse [36 Board Review].

PO Gomez stated that he observed in his peripheral vision PO Cordero take § 87(2)(b) to the ground, but did not remember how this happened. Sgt. Caban denied observing this [09-10 Board Review].

An officer will use only the reasonable force necessary to gain control or custody of a subject. Patrol Guide, procedure 221-01 [15 Board Review].

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation M – Abuse of Authority: An officer stopped § 87(2)(b)

Allegation N – Abuse of Authority: An officer frisked § 87(2)(b)

Allegation O – Abuse of Authority: An officer searched § 87(2)(b)

In a phone statement, § 87(2)(b) alleged that he was stopped, frisked, and searched by an officer. Following the search, § 87(2)(b) was told to leave [05 Board Review].

§ 87(2)(b) testified that § 87(2)(b) ran or walked away prior to having any engagement with the officers. § 87(2)(b) confirmed that § 87(2)(b) continued walking and was never stopped by the officers [03-04 Board Review].

No officer testified to stopping a fourth male during this incident [08-10 Board Review].



2018-02-22_20-12-36.mp4

Video footage captured by a nearby deli's surveillance camera depicted a group of four males walking together prior to being stopped. As the officers initiated the stop, the male wearing a dark shirt and white pants, identified by the investigation as § 87(2)(b) crosses Westchester Avenue and leaves the scene without having any apparent interaction with officers. His movement is never impeded [18 Board Review].

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

Allegation P – Force: Police Officer Lawrence Chan used physical force against § 87(2)(b)

Allegation Q – Force: Police Officer Stephanie Sanchez used physical force against § 87(2)(b)

Allegation R – Force: Police Officer Florenc Dacaj used physical force against § 87(2)(b)

Allegation S – Force: Police Officer Cary Oliva used physical force against § 87(2)(b)

Allegation T – Force: Sergeant Jose Caban used physical force against § 87(2)(b)

Allegation U – Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b) testified that after recording the video, she stood against a gate about two car lengths from the police interaction to observe. Suddenly, 10 to 15 officers approached § 87(2)(b)

grabbed her, and attempted to pull her from the gate she was holding with her right hand. No directives were given prior to this physical action. § 87(2)(b) was unable to describe these officers.

§ 87(2)(b) stated that she was about to let go of the gate when an officer punched her on the left side of her face six to seven times. One of these punches landed near the corner of her left eye and caused redness and bruising. § 87(2)(b) released her grip at some point while being punched, and officers then dragged her to the ground using grips on her arms. She was then handcuffed. § 87(2)(b) estimated that the struggle lasted about five minutes [06 Board Review].

§ 87(2)(b) submitted several photos of injuries she sustained during this incident, showing abrasions, redness, and bruising to her right knee, left thigh, and left hand. One of these photos depicted redness over a preexisting scar on the left side of her face [19 Board Review].

§ 87(2)(b) visited § 87(2)(b), and informed medical staff that officers punched and tackled her. § 87(2)(b) complained of pain to her neck, head, and back. According to her medical records, she was diagnosed with facial swelling and contusions to her head and back [34 Board Review: See Privileged Medical Documents].

In a phone statement, § 87(2)(b) revealed that he witnessed several officers punch, kick, and drag § 87(2)(b) to a police vehicle. He did not see § 87(2)(b) attempt to flee at any point [07 Board Review].

§ 87(2)(b) testified that a few officers struck and aggressively grabbed § 87(2)(b) by her arms and chest, bringing her to the ground. According to § 87(2)(b) resisted and attempted to get away for two to three minutes. § 87(2)(b) was unable to describe what exactly § 87(2)(b) did with her body [03 Board Review].

Neither § 87(2)(b) nor § 87(2)(b) mentioned a physical struggle between § 87(2)(b) and officers [04-05 Board Review].

In a phone statement, § 87(2)(b) former co-worker, § 87(2)(b) stated that he and another former co-worker received a FaceTime call from § 87(2)(b) during the incident. He

did not observe any force used against § 87(2)(b) because an officer terminated the call [20 Board Review].



2018-02-22_8-58-37.mp4

There was no video showing the struggle between § 87(2)(b) and the officers. However, footage from the deli revealed that PO Gomez left the scene in the officers' vehicle at the 0:12 mark, thereby eliminating him from any role in § 87(2)(b) apprehension. § 87(2)(b) approached PO Cordero and Sgt. Caban as they remained on the ground with § 87(2)(b) and § 87(2)(b). PO Cordero stood up, and § 87(2)(b) backed away and out of the camera's view at the 0:50 mark. When backup officers arrived, Sgt. Caban ran in the direction of where § 87(2)(b) was last seen [21 Board Review].

TRIs prepared by PO Chan, PO Sanchez, PO Dacaj, and PO Oliva noted that a forcible takedown was used against § 87(2)(b) in order to overcome resistance. No TRIs were prepared by officers from PSA 7 [22 Board Review].

The ISAR prepared by Captain Tompkins noted that § 87(2)(b) was screaming and creating a scene as PO Gomez and Sgt. Caban were gaining control of the males. § 87(2)(b) was believed to be a witness or have some involvement in the shooting, and PO Gomez pointed her out to the arriving 40th Precinct officers. PO Oliva and PO Gomez admitted to the use of a takedown but denied the use of any other force. Captain Tompkins interviewed § 87(2)(b) who stated that she was punched, kicked, and kned by officers while on the ground. She acknowledged that she did not comply with the officers' orders. The ISAR made no mention of any force used by Sgt. Caban [16 Board Review].

Memo book entries made by PO Chan, PO Dacaj, and PO Oliva were generally consistent with their CCRB testimonies as they noted that § 87(2)(b) was pointed out by or interacting with a PSA 7 officer, that she resisted by grabbing the fence, and that officers took her to the ground [24 Board Review].

PO Chan and PO Dacaj stated that, upon arriving on scene, they were instructed to, "Get her!" by an unidentified PSA 7 officer. According to PO Chan, the officer provided no additional information concerning § 87(2)(b) who was standing on the sidewalk 10 to 15 feet away from the PSA 7 officers. PO Dacaj stated that the PSA 7 officer initiated physical contact with § 87(2)(b) before the 40th Precinct officers reached her. PO Chan and PO Dacaj both testified that § 87(2)(b) grabbed the fence. The officers used a forcible takedown after the officers were unsuccessful in loosening her grip on the fence. PO Chan and PO Dacaj denied punching § 87(2)(b) [25-26 Board Review].

PO Sanchez confirmed that an unidentified PSA 7 officer told them to apprehend § 87(2)(b). She stated a different PSA 7 officer was with § 87(2)(b) and attempting to pull her away from a fence. Similarly, PO Oliva testified that a PSA 7 officer told them to get § 87(2)(b) who was walking away from the incident. Both PO Sanchez and PO Oliva stated that officers pulled § 87(2)(b) from the fence and to the ground using grips on her arms and body. Both denied that § 87(2)(b) was punched by any officer [27-28 Board Review].

PO Cordero testified that he observed § 87(2)(b) for the first time as he was handcuffing § 87(2)(b) who had no prior involvement in the incident, was screaming as she crossed the street toward the officers. Her behavior caused the stopped males to become increasingly verbally combative. The officers told her to leave multiple times, but she did not listen.

PO Cordero did not provide any information to the backup officers regarding § 87(2)(b) PO Cordero denied having any involvement in the apprehension of § 87(2)(b) PO Cordero did not know if Sgt. Caban participated in her apprehension. He did not observe any officer use force against her [11 Board Review].

PO Gomez testified that although he issued her two summonses for disorderly conduct, these summonses resulted from information he received from unidentified officers at the 40th Precinct. PO Gomez did not learn the details of any force used against § 87(2)(b) because he was in pursuit of § 87(2)(b) [09 Board Review].

Sgt. Caban testified that he did not have any involvement with § 87(2)(b) or use any force against her. He did not witness a struggle involving § 87(2)(b) or learn the details of her apprehension. During his CCRB interview, Sgt. Caban reviewed the above-described ISAR, which he believed to be inaccurate because he had no memory of a female prisoner or of PO Gomez using a takedown against anyone [10 Board Review].

Officers will use only the reasonable force necessary to gain control or custody of a subject. Patrol Guide, procedure 221-01 [15 Board Review].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation V – Discourtesy: An officer acted discourteously toward § 87(2)(b)

§ 87(2)(b) testified that he observed an officer smack § 87(2)(b)'s phone out of her hand in the early stages of the above-described physical struggle. He did not see which officer did this because it was dark outside [03 Board Review].

Neither § 87(2)(b) nor any other party mentioned her phone being smacked from her hand. As noted above, § 87(2)(b) stated that he received a FaceTime call from § 87(2)(b) as the struggle was unfolding. Although he stated that the call was terminated by an officer, he made no mention of the phone falling or dropping to the ground [04-07, 20 Board Review].

All of the officers interviewed denied striking § 87(2)(b) phone from her hand. There was no mention of any such action in any NYPD document [09-11, 25-28 Board Review].

§ 87(2)(g)

Allegation W – Force: Police Officer Jose Cordero used physical force against § 87(2)(b)

§ 87(2)(b) testified that she was lifted from the ground and escorted to an RMP by officers. Along the way, she pushed her upper body backward because she felt she had done nothing wrong. At that point, a PSA 7 officer generally matching PO Cordero's description grabbed her hair with one hand and pulled her head backward. § 87(2)(b) was inches from the RMP at that time and did not refuse to get inside of it. The aforementioned officer forcefully pushed § 87(2)(b) into the RMP. Her torso landed on the back seat, but her legs were still outside of the vehicle. The officer punched § 87(2)(b) lower left leg two to three times but did not place them into the vehicle or say anything to her. No other officers assisted or were in the vicinity at the time [06 Board Review].

§ 87(2)(b) medical documents from § 87(2)(b) revealed that she complained of pain all over her body. The documents made no mention of any pain or injury specifically to her legs [34 Board Review, see Privileged Medical Documents]. Similarly, none of the photos provided by § 87(2)(b) showed an injury to her lower leg [19 Board Review].

§ 87(2)(b) and § 87(2)(b) were not in a position to observe the interaction and made no mention of an officer pulling § 87(2)(b) hair or punching her while she was in an RMP [03-04, 07 Board Review].

PO Cordero denied placing § 87(2)(b) into an RMP and did not remember other officers doing so. He also denied using or observing any force against § 87(2)(b) [11 Board Review].

PO Gomez, Sgt. Caban, PO Chan, PO Sanchez, and PO Dacaj denied placing § 87(2)(b) into an RMP, using force against her at this time, or observing the alleged misconduct. PO Dacaj reported that § 87(2)(b) was placed into an RMP by PSA 7 officers, though he did not recall their identities. These officers asked PO Dacaj to transport § 87(2)(b) to the PSA 7 stationhouse. PO Dacaj and PO Oliva were the only officers in the RMP during transport. PO Oliva did not remember if he placed § 87(2)(b) into an RMP or if she resisted. He did not remember seeing any of the alleged misconduct [09-10, 25-28 Board Review].

None of the documentation prepared in regard to this incident mentioned § 87(2)(b) resisting while being placed inside a vehicle or any force used against her during this process [16, 22-24 Board Review]. Similarly, video footage did not depict who escorted § 87(2)(b) to an RMP and whether force was used [23 Board Review].

§ 87(2)(g)

Allegation X – Force: Police Officer Jose Cordero used physical force against § 87(2)(b)

§ 87(2)(b) testified that an officer placed § 87(2)(b) into the same RMP that § 87(2)(b) was already seated in. § 87(2)(b) did not refuse to get into the vehicle but was “talking shit” and stating that he and § 87(2)(b) were being arrested without cause. In response, an officer punched § 87(2)(b) four to five times, after which § 87(2)(b) responded that the officer “hit like a bitch.” The officer then continued to punch § 87(2)(b) whose legs were still outside of the vehicle. § 87(2)(b) brought his legs into the vehicle after the officer punched him [03 Board Review].

No other civilian witnessed an officer use force against § 87(2)(b) and § 87(2)(b) was unavailable to the investigation [04-06 Board Review, see IAs].

PO Cordero testified that § 87(2)(b) placed his foot on the door of the RMP, pushed away, and stiffened his body. PO Cordero tried to talk to § 87(2)(b) who did not listen. PO Cordero guided § 87(2)(b) inside but did not punch him or see another officer do so [11 Board Review].

PO Gomez stated that he returned to the incident location and assisted PO Cordero in placing § 87(2)(b) into an RMP. § 87(2)(b) stiffened his body, and the officers pushed him to get him

inside. Aside from pushing § 87(2)(b) no additional force was used by PO Gomez or PO Cordero [09 Board Review].

Of the seven officers interviewed, no officer testified to observing an officer punch § 87(2)(b) or any other civilian [10 Board Review].

Video footage did not capture whether any force was used against § 87(2)(b) [29 Board Review].

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) or § 87(2)(b) has been a party [30 Board Review].
- § 87(2)(b)
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 -
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- Given his common name, and due to a lack of additional information, the investigation was unable to determine whether § 87(2)(b) has been involved in any prior CCRB complaints [30 Board Review].
- Sgt. Caban has been a member of the service for fifteen years and has been the subject of 18 other CCRB complaints and 47 allegations, of which five were substantiated:
 - 200306533 involved substantiated allegations of a refusal to provide his name and shield number, a retaliatory summons, and offensive language. The Board recommended charges, but the case was dismissed by the NYPD.
 - 200711818 involved a substantiated allegation of physical force. The Board recommended instructions, and the NYPD imposed instructions.
 - 201706354 involved a substantiated vehicle search allegation. The Board recommended charges, and the NYPD has not yet imposed discipline.
- PO Cordero has been a member of the service for three years and has been the subject of four other CCRB complaints and 12 allegations, of which three were substantiated:
 - 201702059 involved a substantiated allegation of a frisk against PO Cordero. The Board recommended command level instructions, and the NYPD has not yet imposed discipline.
 - 201706453 involved substantiated allegations of a vehicle search and retaliatory summons against PO Cordero. The Board recommended charges, and the NYPD has not yet imposed discipline.
 - § 87(2)(g)
- PO Gomez has been a member of the service for four years and has been the subject of two CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)
- PO Oliva has been a member of the service for four years and has been the subject of one CCRB complaint and two allegations, none of which were substantiated. § 87(2)(g)
- PO Sanchez has been a member of the service for one year, and this is the first CCRB complaint to which she has been a subject.
- PO Chan has been a member of the service for three years, and this is the first CCRB complaint to which he has been a subject.
- PO Dacaj has been a member of the service for two years, and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming assault and battery, negligence, unlawful imprisonment, negligent hiring and retention, false arrest, violation of federal and state civil rights, and malicious prosecution, and seeking \$250,000 as redress. There is no 50H hearing scheduled [31 Board Review]
- As of March 2, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim filed by § 87(2)(b) or § 87(2)(b) [31 Board Review].

- § 87(2)(b); §§ 86(1)(3)(4); § 87(2)(c)
[Redacted]
[Redacted]
[Redacted]
[Redacted]
- § 87(2)(b); §§ 86(1)(3)(4); § 87(2)(c)
[Redacted]
[Redacted]
- § 87(2)(b); §§ 86(1)(3)(4); § 87(2)(c)
[Redacted]
[Redacted]
[Redacted]
- § 87(2)(b); §§ 86(1)(3)(4); § 87(2)(c)
[Redacted]
[Redacted]

Squad No.: 7

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date